

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

**Latoya Gilliam and Kayla McCrobie,
individually and on behalf of all others
similarly situated,**

Plaintiffs,

v.

Case No. 20-cv-3504

**United States Department of Agriculture and
George Ervin Perdue III, in his official
capacity as Secretary of the United States
Department of Agriculture,**

Defendants.

**NOTICE OF INTENT TO ISSUE SUPPLEMENTAL EMERGENCY
ALLOTMENTS TO COMMONWEALTH OF PENNSYLVANIA AND
RENEWED MOTION FOR A STAY OF THE PRELIMINARY INJUNCTION**

On October 2, 2020, the U.S. Department of Agriculture (“USDA”) moved the Court to clarify its preliminary injunction, in part, and to stay the preliminary injunction pending USDA’s appeal. *See* ECF No. 37. In its motion, USDA noted that at least one other District Court has disagreed with the Court’s legal conclusions—confirming that there is a serious question on the merits—and explained that under the Court’s preliminary injunction, the Commonwealth of Pennsylvania will receive roughly *\$60 million* per month in *additional* SNAP benefits under Plaintiffs’ reading of the relevant statute. *See id.* Meanwhile, every other State will be subject to a different reading of the statute, resulting in an inconsistent administration of (and inequitable treatment under) the SNAP program.

Importantly, in the interest of transparency, and to meaningfully exercise its right to seek relief before the Third Circuit should this Court deny its stay motion, USDA informed the Court that it would “issue emergency allotments to Pennsylvania [the same day], commensurate to those provided to every other State, while . . . USDA seeks a stay of” the preliminary injunction. ECF No. 37. USDA takes its Court-ordered obligations seriously, and sought in its October 2 motion only to give the Court an opportunity to resolve whether it would provide USDA with relief before its request was potentially mooted, in part, by USDA’s approval of Pennsylvania’s pending application for enhanced, prospective SNAP benefits.

On October 21, 2020, the Court granted in part and denied in part USDA’s motion. *See* ECF No. 45. The Court clarified that Pennsylvania’s request for retroactive payments was improper. *See* ECF No. 45, at 2 n.1. However, the Court denied USDA’s request for a stay pending appeal (or an administrative stay to allow the Third Circuit time to decide a stay request), noting that “Defendants have neither filed a notice of appeal from the Injunction Order, nor clearly indicated that they intend to do so imminently.” ECF No. 45, at 2 n.2. The Court explained that its denial was without prejudice to renewal following the filing of a notice of appeal. *See id.* USDA has now filed its notice of appeal. *See* ECF No. 46.

For the reasons set forth in USDA’s original stay motion, *see* ECF No. 37, which in the interest of brevity USDA hereby incorporates by reference rather than repeats, and to avoid any doubt regarding compliance with Federal Rule of Appellate Procedure 8(a), USDA respectfully renews its request that the Court stay its preliminary injunction pending USDA’s appeal of the same pursuant to F.R.C.P. 62(d), or the Court’s inherent managerial authority, *see Scripps-Howard Radio v. F.C.C.*, 316 U.S. 4, 9–10 (1942) (“It has always been held . . . that, as part of its traditional equipment for the administration of justice, a federal court can stay the enforcement of a judgment

pending the outcome of an appeal.”). At a minimum, USDA requests that the Court immediately grant a time-limited administrative stay while USDA seeks a stay from the Third Circuit.

In the meantime, USDA will issue supplemental emergency allotments to Pennsylvania for the month of October 2020 consistent with the Court’s preliminary injunction in light of the Court’s admonition that USDA “shall immediately comply.”¹ ECF No. 45, at 1. However, should USDA ultimately secure a vacatur of the Court’s preliminary injunction in the Third Circuit, USDA will seek reimbursement from Pennsylvania for the additional emergency allotments Pennsylvania will receive under Plaintiffs’ reading of the relevant statute—payments that, as of now, will be provided to no other State. This reimbursement would not come from individual SNAP households.

Because the parties have already briefed whether a stay is appropriate, USDA respectfully requests that the Court resolve USDA’s motion for a stay by Friday, October 23, 2020, allowing USDA to then seek relief before the Third Circuit before USDA must complete processing emergency allotment applications for November 2020.

Dated: October 22, 2020

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

ALEXANDER K. HAAS
Branch Director, Federal Programs Branch

/s/ Kuntal Cholera
KUNTAL V. CHOLERA

¹ Undersigned counsel has been informed by USDA that the supplemental emergency allotment payment to Pennsylvania for October 2020 will total around \$58,732,644.

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all users receiving ECF notices for this case.

/s/ Kuntal Cholera

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